IN THE

Supreme Court of the United States

On Petition for Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Motion of Albert H. Allen et al. for Leave to File Brief Attached of Albert H. Allen as Amicus Curiae in Support of Petition for Writs of Certiorari and Brief of Albert H. Allen as Amicus Curiae.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1960

No. 159

REVELL, INC., *et al.*,

Petitioners,

vs.

ROBERT A. RIDDELL, District Director of Internal Revenue, *et al.*,

Respondents.

On Petition for Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Motion of Albert H. Allen et al. for Leave to File Brief Attached of Albert H. Allen as Amicus Curiae in Support of Petition for Writs of Certiorari.

Your *amicus*, Albert H. Allen, an attorney admitted to practice in this Court, moves the court for leave to file the attached brief as *amicus curiae* in support of the petition herein for writs of certiorari to the United States Court of Appeals for the Ninth Circuit. The interest of your *amicus* in this proceeding is shown in the attached brief.

Your *amicus* sets forth that he has received the consent of George T. Altman, counsel for petitioners herein, to the filing of the attached brief; but that

Honorable J. Lee Rankin, Solicitor General of the United States, has refused such consent.

Your *amicus* further sets forth that the attorneys whose names appear below have authorized him to say that they support and join in this motion, and that they now have pending in the Tax Court of the United States matters containing the same situation of conflicting "determinations" as is involved in this proceeding, and your *amicus* and the said attorneys submit to this court that the issue presented is one of the utmost importance in federal revenue procedure and should be settled by this court.

Wherefore your *amicus* prays that this motion be granted.

ALBERT H. ALLEN,
Pro Se et al.

Attorneys Supporting and Joining in Above Motion.

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On Petition for Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Brief of Albert H. Allen as Amicus Curiae.

Comes now Albert H. Allen and submits this brief as *amicus curiae* in support of the petition herein for writs of certiorari.

Your *amicus* is an attorney-at-law admitted to practice in this court. As an attorney admitted to practice in the Tax Court of the United States he has filed and there are now pending in the Tax Court of the United States, a large number of petitions on behalf of taxpayers in matters in which the Commissioner has issued statutory deficiency notices, the determinations in which are of the same general character as those involved in this proceeding.

With respect to the volume of these petitions which your *amicus* has filed in the Tax Court of the United States, your *amicus* sets forth that he alone has filed and there are presently pending one hundred eighty-five petitions involving eighty five separate taxpayers on statutory notices for income tax deficiencies arising from conflicting determinations similar to those involved in this proceeding before this court. In most instances the tax demanded by reason of such conflicting notices is two and three times the amount of tax which the Commissioner could recover on any one theory asserted by him and in the interim the taxpayer faces a proposed assessment under all of the notices which the Commissioner contends the taxpayer must prove are incorrect.

Your *amicus* submits that in addition on June 14, 1960, there were served upon no less than *fifty individual clients* of your *amicus*, ninety-day statutory notices arising out of a set of facts almost identical to the facts and issues in the matters hereinentitled *Malat vs. Riddell* and *Lyons Lessor Enterprises vs. Riddell*.

In each of these notices served on June 14, 1960, the Commissioner purportedly reached a determination that the respective taxpayers were liable as transferees of the separate corporations involved under the provisions of Sections 482, 269 and 1551 of the Internal Revenue Code of 1954. However, on June 17, 1960, the Commissioner served upon the identical taxpayers, ninety-day statutory notices in which the Commissioner again made an alleged determination of income taxes due from the same taxpayers arising out of the identical corporations. In each instance the Commissioner purportedly determined a tax is due by each of the in-

dividuals as transferees of an association of the same corporations, which the Commissioner has allegedly determined is an association taxable as a corporation under Section 7701 (a)(3) of the Internal Revenue Code of 1954.

Each of the fifty individual clients will now have to file separate petitions with respect to the notice served on June 14, 1960 and the notice served on June 17, 1960, or in lieu thereof pay two one-hundred times the amount of tax collectible on an assessment under either of said notices. The burden of filing petitions in answer to the two so-called determinations of the Commissioner is an unwarranted burden which, your *amicus* contends, was beyond the intention of Congress and has placed the taxpayers in a position of either the burden and costs of preparing and filing the petitions or paying large taxes beyond the amount claimed on any one theory of the facts.

Your *amicus* submits to this court that it is of the utmost importance for taxpayers generally to know whether the Commissioner of Internal Revenue may assert against the same persons and based upon the same income several concurrent deficiency determinations in different amounts and grounded upon different and conflicting theories of facts and force seeking a tax four and five times the total amount of the tax for which the taxpayer could lawfully be held liable on any theory of the facts and whether or not the Commissioner may indeed do so, the person against whom such deficiencies are asserted is required to disprove any or all of such factual theories, although some of the conflicts with the others only one can possibly be true.

Your *amicus* submits that it is of the utmost importance for taxpayers generally to know whether the related notices of deficiencies, each on its face wholly independent of the others, and demanding payment of the amount shown therein, so that as far as the recipient is advised the Government is demanding payment of all of the amounts asserted, whether that is consistent with due process under the Constitution; whether a taxpayer against whom the Commissioner contends a tax is due is to be subjected to a number of statutory notices arising out of the same transaction, each demanding a tax which collectively may be four or five or ten times the amount of the total tax which could have been due by the taxpayer under any circumstances.

Your *amicus* respectfully submits that the questions raised by the petition herein for writs of certiorari are of the utmost importance to taxpayers; he respectfully urges the granting of said writs to the United States Court of Appeals for the Ninth Circuit as prayed for in the petition now before the court.

Respectfully submitted,

ALBERT H. ALLEN,

Amicus Curiae.